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10/054,038	11/12/2001	Sunao Takatori	052935/240964	1387
826	7590	10/09/2007	EXAMINER	
ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000			HALIYUR, VENKATESH N	
			ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/054,038

Applicant(s)

TAKATORI ET AL.

Examiner

Venkatesh Haliyur

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☒ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. The amendments filed on 7/17/2007 is insufficient to overcome the rejection of claims 1-10 based upon Joy et al and Yanagidate et al references as set forth in the last Office action of 4/18/2007. Rejection follows.
2. Claims 1-10 are pending in the application.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claim 6 is rejected under 35 U.S.C. 102(e) as being anticipated by Yanagidate et al [US Pub: US 2002/0099632].

Regarding claim 6, Yanagidate et al in the invention of "Method and system of Connecting an Internet" disclosed a billing device (**bill charging**

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device, item 30 of Fig 1, para 0039-0040) comprising: means for generating a billing file storing information for billing (**stores billing data, para 0041**) which includes the type (**service class, 0062**) of a transmitted packet unit the number of transmitted packets (**traffic flow, para 0055**), and a packet communication rate (**minimum and maximum speed**), with respect to an ID to be billed (**service ID, para 0062-0063**); and means for generating a charging file for the ID to be billed for a predetermined period (**generate traffic data from starting to finishing time of the internet connection, para 0013,0055,0079 Figs 1-2**).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-5,7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Joy et al [US Pat: 6,728,263] in view of Yanagidate et al [US Pub: US 2002/0099632].

Regarding claim 1, Joy et al in the invention of "Dynamic Sizing of Data Packets" disclosed a communication terminal device (**server, item 200 of Fig 2**) comprising: a packet unit (**packet size**) determining unit (**size selector, item 210**

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of Fig 2) configured to select a most appropriate packet unit (**packetizer determines size of the packet dynamically**) for transmission data to be packetized (**col 5, lines 3-51**); and a packet generator (**packetizer, item 208 of Fig 2**) for packetizing the transmission data based on a packet unit determined by said packet unit determining unit (**size selector, item 210 of Fig 2, col 5, lines 52-66, col 7, lines 27-39**), but fails to disclose that the packet unit determining unit only selects packet units that can be recognized by a destination communication terminal device; However, Yanagidate et al in the invention of "Method and system of Connecting an Internet" disclosed a method for packet unit determining unit (**customer information management device, item 32 of fig 1**) only selects packet units that can be recognized by a destination communication terminal device based on the bandwidth (**para 0062**) and the service classification ID information sent by the destination terminal device (**para 0054-0065**). Therefore it would have been obvious for one of ordinary skill in the art at the time the invention was made to use the method of only selecting packet units that can be recognized by a destination communication terminal device as taught by Yanagidate et al in the system of Joy et al to configure a packet unit determining unit to only select packet units that is recognized based on the service class ID of the destination communication terminal device. One is motivated as such in order only select the appropriate packet units as determined by the determining unit for the packetizer to transmit packet units that is

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recognized by the destination communication terminal to improve the throughput of the transmitting unit.

Regarding claim 2, Joy et al disclosed a communication terminal device **(server, item 200 of Fig 2)**, wherein said packet unit determining unit **(size selector, item 210 of Fig 2)** comprises means for determining the appropriate packet unit **(packet size, col 5, lines 3-17)** based on packet units that can be transmitted by the communication terminal device **(bandwidth of the server, col 5, lines 29-62)** and packet units that can be transmitted by a destination **(bandwidth of the client)** communication terminal device **(item 202 of Fig 2, col 6, lines 5-23)**.

Regarding claim 3, Joy et al disclosed a communication terminal device **(server, item 200 of Fig 2)** further comprising at least one of: means for transmitting a query **(server determines actual bandwidth of the client by monitoring and measuring the connection, col 6, lines 5-38)** about packet units that can be transmitted by a destination communication terminal device to the destination communication terminal device and means for responding **(indicate packet size/bandwidth of the client to the server, col 5, lines 39-62)** to a query about packet units that can be transmitted by the communication terminal device from the destination communication terminal device **(col 7, lines 6-26);**.

Regarding claim 4, Joy et al disclosed a communication terminal device **(server, item 200 of Fig 2)** further comprising: means for storing information

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(storage means, items 22 and 27 of Fig 1) with respect to the packet units that can be recognized **(based on the type of connections to the client)** by the destination communication terminal device **(client, item 202 of Fig 2, col 7, lines 6-54)**.

Regarding claim 5, Joy et al disclosed a communication terminal device **(server, item 200 of Fig 2)** further comprising: means for, if a retransmission request occurs while packets are being transmitted **(by monitoring the connection of the client, col 6, lines 5-48)**, transmitting data subsequent to the retransmission request according a smaller packet unit **(dynamic packet size is changed or adjusted based on the client bandwidth, col 8, lines 10-36)**.

Regarding claim 7, Joy et al disclosed a method for determining packet units for transmission data to be packetized and transmitted from a communication terminal device **(server, item 200 of Fig 2)** to a destination communication device **(client, 202 of Fig 2)**, the method comprising the step of: determining packet units recognizable **(based on client service classification)** by said destination communication device for transmitting transmission data from said communication terminal device to said destination communication device **(col 5, lines 39-48)**; and packetizing said transmission data according to the packet unit selected **(col 5, lines 49-66, col 7, lines 27-39)**, but fails to disclose selecting a packet unit recognizable by said destination communication device to minimize the amount of transmission data for said packet unit. However, Yanagidate et al disclosed a method for packet unit determining unit **(customer**

information management device, item 32 of fig 1) to select packet units that can be recognized by a destination communication terminal device based on the bandwidth (**para 0062**) and the service classification ID information sent by the destination terminal device (**para 0054-0065**). Therefore it would have been obvious for one of ordinary skill in the art at the time the invention was made to use the method of selecting packet units that can be recognized by a destination communication terminal device as taught by Yanagidate et al in the system of Joy et al to configure a packet unit determining unit to only select packet units that is recognized based on the service class ID of the destination communication terminal device. One is motivated as such in order select the appropriate packet units as determined by the determining unit for the packetizer to transmit packet units that is recognized by the destination communication terminal to improve the throughput of the transmitting unit.

Regarding claim 8, Joy et al disclosed transmitting said packetized transmission data from said communication terminal device to said destination communication device (**col 5, lines 36-38**).

Regarding claim 9, Joy et al disclosed determining whether information regarding packet units that can be recognized (**based on the service class/type of connection**) by said destination communication device (**client**) is stored in a memory of said communication terminal device (**server, col 7, lines 40-65**).

Regarding claim 10, Joy et al disclosed generating a retransmission request after said transmitting step requesting a different packet unit size;

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repacketizing said transmission data into a different packet unit size according to said retransmission request **(by monitoring the connection of the client, col 6, lines 5-48)**; and transmitting said repacketized transmission data to said destination communication device **(dynamic packet size is changed or adjusted based on the client bandwidth, col 8, lines 10-36)**.

Response to Arguments

7. Applicant's arguments filed on 07/17/2007 have been fully considered but they are not persuasive. Examiner respectfully traverses the applicants to the references as below,

With respect to applicants main argument for claims 1-5,7-10 that Joy does not teach or suggest a packet unit determining unit that only selects packet units that can be recognized by a destination communication terminal device as amended in claim 1, examiner points applicants to col 7, lines 27-39, where Joy disclosed a size selector so an optimal packet size can be selected is selected based on the receiving capability of the client. However, a new ground(s) of rejection is made based upon Joy et al in view of Yanagidate et al references for the amended claim 1 as in the rejection above.

With respect to applicants argument for claim 6 that Yanagidate does not disclose or suggest a billing file which stores information related to a packet communication rate, where the packet communication rate is the unit price of the packet, examiner points applicants to Yanagidate et al reference where it is disclosed

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that bill charging device stores information related to a packet communication rate (para 0040), where the packet communication rate is the unit price of the packet (charge based on packet flowing ratio, para 0013 and 0079).

In response to applicant's argument that the references fail to show certain features of applicants invention such billing file which stores information related to a packet communication rate, where the packet communication rate is the unit price of the packet, it is noted that the features upon which applicant relies i.e., price of data transmission and the determining condition for the selection of the packets that is recognized by the destination are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications should be directed to the attention to Venkatesh Haliyur whose phone number is 571-272-8616.

The examiner can normally be reached on Monday-Friday from 9:00AM to 5:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edan Orgad can be reached @ (571)-272-7884. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is (571)-272-2600 or fax to 571-273-8300.

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197(toll-free).

Venkatesh Haliyur

Patent Examiner

UW 09/28/07

EDAN . . ORGAD
SUPERVISORY PATENT EXAMINER

Edan Orgad 11/31/07